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IDAHO LEGISLATURE

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FIFTY-EIGHTH LEGISLATURE

EIGHTH LEGISLATIVE DAY
MONDAY, JANUARY 16, 2006

Senate Chamber

President Risch called the Senate to order at 11:30 a.m.

Roll call showed all members present except Senators Richardson and Sweet, absent and formally excused by the Chair; and Senators Burkett, Cameron, Langhorst, and Marley, absent and excused.

Prayer was offered by Chaplain Don Hardenbrook.

The Pledge of Allegiance was led by Jillian Marotz, Page.

The Senate advanced to the Third Order of Business.

Reading and Correction of the Journal

Senators Burkett, Langhorst, and Marley were recorded present at this order of business.

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of January 13, 2006, was read and approved as corrected.

DARRINGTON, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifth Order of Business.

Petitions, Resolutions, and Memorials

SJM 113 BY JUDICIARY AND RULES COMMITTEE A JOINT MEMORIAL

TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the Senate and the House of Representatives of the State of Idaho assembled in the Second Regular Session of the Fifty-eighth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, Judge N. Randy Smith has been nominated by President George W. Bush to serve on the Ninth Circuit U.S. Court of Appeals; and

WHEREAS, Judge N. Randy Smith received his law and undergraduate degrees from Brigham Young University; and

WHEREAS, Judge N. Randy Smith served as Sixth District Judge in Pocatello, Idaho, since 1996 and serves as the presiding judge of the felony drug court in the Sixth District; and

WHEREAS, Judge N. Randy Smith has served as pro tem justice on the Idaho Supreme Court and the Idaho Court of Appeals; and

WHEREAS, Judge N. Randy Smith has taught legal and business classes as part of the College of Business faculty at Idaho State University, Brigham Young University and Boise State University; and

WHEREAS, as a partner with Merrill and Merrill, Chartered, from 1982 to 1996, Judge N. Randy Smith's practice included federal and state court practice in all areas of litigation; and

WHEREAS, Judge N. Randy Smith served as corporate counsel for the J. R. Simplot Company from 1976 to 1982; and

WHEREAS, Judge N. Randy Smith received a Lawyer's AV rating from Martindale-Hubbell; and

WHEREAS, Judge N. Randy Smith has served in various capacities, including president, of the Idaho District Judges Association; and

WHEREAS, Judge N. Randy Smith has been a member of the Idaho Judicial Council, which recommends disciplinary actions for judges, since 1991; and

WHEREAS, Judge N. Randy Smith served as the chairman of the Idaho Small Lawsuit Resolution Act Committee and as a member of the Idaho State Evidence Rules and Criminal Rules Advisory Committees; and

WHEREAS, Judge N. Randy Smith served on the United States Ninth Circuit U.S. Court of Appeals Judicial Conference Executive Committee from 1991 to 1995 and the United States District Court Civil Justice Reform Act Committee for Idaho from 1991 to 1996; and

WHEREAS, Judge N. Randy Smith has been a member of numerous American Bar Association sections, including the litigation, labor law and judicial sections; and

WHEREAS, Judge N. Randy Smith was awarded the distinguished George G. Granta, Jr. Award for Professionalism in 2004, based upon his significant contributions over a substantial period of time to the Idaho judicial system and his status as a role model in the community; and

WHEREAS, Judge N. Randy Smith was awarded the prestigious Idaho State University "Statesman of the Year" Award in 2005, which recognized his significant contributions to the welfare of Idaho and his commitment to reducing crime and preventing offenders from returning to criminal behavior; and

WHEREAS, Judge N. Randy Smith is a highly respected jurist, attorney, mediator and community member all across the state.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-eighth Idaho Legislature, the Senate and the House of Representatives concurring therein, that we support the confirmation of the appointment of Judge N. Randy Smith to serve on the Ninth Circuit U.S. Court of Appeals.

BE IT FURTHER RESOLVED that the Secretary of the Senate be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the Senate and the Speaker of the House of Representatives of Congress, and the

congressional delegation representing the State of Idaho in the Congress of the United States.

SJM 113 was introduced, read at length, and referred to the Judiciary and Rules Committee for printing.

The Senate advanced to the Sixth Order of Business.

Reports of Standing Committees

January 13, 2006

The JUDICIARY AND RULES Committee reports that **S 1254** has been correctly printed.

DARRINGTON, Chairman

S 1254 was referred to the State Affairs Committee.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eleventh Order of Business.

Introduction, First Reading and Reference of Bills, House Petitions, Resolutions, and Memorials

S 1255

BY JUDICIARY AND RULES COMMITTEE AN ACT

RELATING TO THE UNIFORM ENVIRONMENTAL COVENANTS ACT; AMENDING TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 30, TITLE 55, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO SET FORTH THE NATURE OF RIGHTS AND SUBORDINATION OF INTERESTS, TO SET FORTH REQUIREMENTS FOR THE CONTENTS OF ENVIRONMENTAL COVENANTS, TO PROVIDE THAT QUALIFYING ENVIRONMENTAL COVENANTS RUN WITH THE LAND, TO PROVIDE FOR VALIDITY AND EFFECT OF ENVIRONMENTAL COVENANTS, TO PROVIDE FOR THE RELATIONSHIP OF ENVIRONMENTAL COVENANTS TO OTHER LAND USE LAWS, TO REQUIRE NOTICE AND RECORDING, TO SET FORTH DURATION OF COVENANTS, TO PROVIDE FOR AMENDMENT BY COURT ACTION, TO PROVIDE FOR AMENDMENT OR TERMINATION BY CONSENT, TO PROVIDE FOR ENFORCEMENT, TO ESTABLISH A REGISTRY AND TO REQUIRE NOTICE, TO PROVIDE FOR UNIFORMITY OF APPLICATION AND CONSTRUCTION, TO PROVIDE FOR RELATION TO THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT AND TO PROVIDE FOR SEVERABILITY.

S 1256

BY JUDICIARY AND RULES COMMITTEE AN ACT

RELATING TO THE UNIFORM LIMITED PARTNERSHIP ACT; REPEALING CHAPTER 2, TITLE 53, IDAHO CODE; AMENDING TITLE 53, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 2, TITLE 53, IDAHO CODE, TO PROVIDE FOR THE UNIFORM LIMITED PARTNERSHIP ACT, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR KNOWLEDGE AND NOTICE, TO PROVIDE

FOR NATURE, PURPOSE AND DURATION OF ENTITIES, TO SET FORTH POWERS, TO PROVIDE GOVERNING LAW, TO PROVIDE SUPPLEMENTAL PRINCIPLES OF LAW, TO PROVIDE A RATE OF INTEREST, TO PROVIDE FOR NAMES AND RESERVATION OF NAMES, TO SET FORTH EFFECT OF PARTNERSHIP AGREEMENTS, TO PROVIDE NONWAIVABLE PROVISIONS, TO SET FORTH REQUIRED INFORMATION, TO PROVIDE FOR BUSINESS TRANSACTIONS OF PARTNERS WITH A PARTNERSHIP, TO PROVIDE FOR DUAL CAPACITY, TO PROVIDE FOR REGISTERED OFFICES AND AGENTS, TO PROVIDE FOR CHANGES OF REGISTERED OFFICES OR AGENTS, TO PROVIDE FOR THE RESIGNATION OF REGISTERED AGENTS, TO PROVIDE FOR SERVICE OF PROCESS, TO PROVIDE FOR CONSENT AND PROXIES OF PARTNERS, TO PROVIDE FOR THE FORMATION OF LIMITED PARTNERSHIPS AND CERTIFICATES OF LIMITED PARTNERSHIPS, TO PROVIDE FOR AMENDMENT OR RESTATEMENT OF CERTIFICATES, TO PROVIDE FOR STATEMENTS OF TERMINATION, TO PROVIDE FOR THE SIGNING OF RECORDS, TO PROVIDE FOR SIGNING AND FILING PURSUANT TO A JUDICIAL ORDER, TO PROVIDE FOR DELIVERY TO AND FILING OF RECORDS BY THE SECRETARY OF STATE, TO SET FORTH EFFECTIVE TIMES AND DATES, TO PROVIDE FOR CORRECTING FILED RECORDS, TO PROVIDE FOR LIABILITY FOR FALSE INFORMATION IN FILED RECORDS, TO PROVIDE FOR CERTIFICATES OF EXISTENCE OR AUTHORIZATION, TO PROVIDE FOR ANNUAL REPORTS FOR THE SECRETARY OF STATE, TO SET FORTH PROVISIONS APPLICABLE TO BECOMING A LIMITED PARTNER, TO LIMIT THE RIGHT OR POWER TO BIND LIMITED PARTNERSHIP, TO LIMIT LIABILITY, TO PROVIDE FOR THE RIGHT TO INFORMATION, TO SET FORTH LIMITED DUTIES OF LIMITED PARTNERS, TO SET FORTH PROVISIONS APPLICABLE TO PERSONS WHO ERRONEOUSLY BELIEVE THEMSELVES TO BE A LIMITED PARTNER, TO SET FORTH PROVISIONS APPLICABLE TO BECOMING A GENERAL PARTNER, TO PROVIDE FOR A GENERAL PARTNER AGENT, TO PROVIDE FOR LIABILITY, TO PROVIDE FOR ACTIONS BY AND AGAINST PARTNERSHIPS AND PARTNERS, TO PROVIDE FOR MANAGEMENT RIGHTS, TO PROVIDE FOR THE RIGHT TO INFORMATION, TO SET FORTH GENERAL STANDARDS OF CONDUCT, TO PROVIDE FOR FORMS OF CONTRIBUTION, TO PROVIDE FOR LIABILITY FOR CONTRIBUTION, TO PROVIDE FOR THE SHARING OF DISTRIBUTIONS, TO PROVIDE FOR INTERIM DISTRIBUTIONS, TO LIMIT THE RIGHT TO RECEIVE DISTRIBUTIONS, TO PROVIDE FOR DISTRIBUTIONS IN KIND, TO PROVIDE FOR THE RIGHT TO DISTRIBUTION, TO SET FORTH LIMITATIONS ON DISTRIBUTIONS, TO PROVIDE FOR LIABILITY FOR IMPROPER DISTRIBUTIONS, TO PROVIDE FOR DISSOCIATION OF PERSONS AS LIMITED PARTNERS, TO SET FORTH THE EFFECT OF DISSOCIATION, TO PROVIDE FOR DISSOCIATION OF PERSONS AS GENERAL PARTNERS, TO PROVIDE FOR A PERSON'S POWER TO DISSOCIATE AS GENERAL PARTNER, TO PROVIDE FOR WRONGFUL DISSOCIATION, TO SET FORTH THE EFFECT OF DISSOCIATION, TO PROVIDE FOR THE POWER TO BIND AND LIABILITY TO LIMITED PARTNERSHIPS BEFORE DISSOLUTION OR DISSOCIATION, TO PROVIDE

FOR LIABILITY TO OTHER PERSONS DISSOCIATED AS GENERAL PARTNERS, TO PROVIDE FOR A PARTNER'S TRANSFERABLE INTEREST, TO PROVIDE FOR TRANSFER OF A PARTNER'S TRANSFERABLE INTEREST, TO PROVIDE RIGHTS OF CREDITORS, TO PROVIDE POWER OF ESTATE OF DECEASED PARTNER, TO PROVIDE FOR NONJUDICIAL DISSOLUTION, TO PROVIDE FOR JUDICIAL DISSOLUTION, TO PROVIDE FOR WINDING UP OF THE PARTNERSHIP, TO PROVIDE FOR THE POWER OF CERTAIN PERSONS TO BIND PARTNERSHIP AFTER DISSOLUTION, TO PROVIDE FOR LIABILITY, TO PROVIDE FOR KNOWN AND OTHER CLAIMS AGAINST A DISSOLVED LIMITED PARTNERSHIP, TO PROVIDE FOR LIABILITY OF CERTAIN PERSONS WHEN CLAIMS AGAINST A LIMITED PARTNERSHIP ARE BARRED, TO PROVIDE FOR ADMINISTRATIVE DISSOLUTION, TO PROVIDE FOR REINSTATEMENT, TO PROVIDE FOR APPEALS FROM A DENIAL OF REINSTATEMENT, TO PROVIDE FOR THE DISPOSITION OF ASSETS, TO SET FORTH WHEN CONTRIBUTIONS ARE REQUIRED, TO SET FORTH GOVERNING LAW FOR FOREIGN LIMITED PARTNERSHIPS, TO PROVIDE FOR APPLICATION FOR CERTIFICATES OF AUTHORITY, TO SET FORTH ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS, TO PROVIDE FOR THE FILING OF CERTIFICATES OF AUTHORITY, TO PROVIDE FOR NONCOMPLYING NAMES OF FOREIGN LIMITED PARTNERSHIPS, TO PROVIDE FOR REVOCATION OF CERTIFICATES OF AUTHORITY, TO PROVIDE FOR CANCELLATION OF CERTIFICATES OF AUTHORITY, TO SET FORTH THE EFFECT OF A FAILURE TO HAVE A CERTIFICATE, TO PROVIDE FOR ACTION BY THE ATTORNEY GENERAL, TO PROVIDE FOR DIRECT ACTION BY A PARTNER, TO PROVIDE FOR DERIVATIVE ACTIONS, TO IDENTIFY PROPER PLAINTIFFS, TO PROVIDE FOR PLEADINGS, TO PROVIDE FOR PROCEEDS AND EXPENSES, TO DEFINE TERMS RELATING TO CONVERSIONS AND MERGERS, TO PROVIDE FOR CONVERSION, TO PROVIDE FOR ACTION ON PLANS OF CONVERSION, TO SET FORTH FILINGS REQUIRED FOR CONVERSION, TO PROVIDE EFFECTIVE DATE OF PLANS, TO SET FORTH THE EFFECT OF CONVERSION, TO PROVIDE FOR MERGERS, TO PROVIDE FOR ACTION ON PLANS OF MERGER, TO SET FORTH FILINGS REQUIRED FOR MERGERS, TO PROVIDE EFFECTIVE DATE OF PLANS, TO SET FORTH THE EFFECT OF MERGER, TO SET FORTH RESTRICTIONS ON APPROVAL OF CONVERSIONS, MERGERS AND ON RELINQUISHING CERTAIN STATUS, TO PROVIDE FOR LIABILITY AFTER CONVERSION OR MERGER, TO PROVIDE FOR THE POWER OF CERTAIN PERSONS TO BIND AN ORGANIZATION AFTER CONVERSION OR MERGER, TO PROVIDE FOR NONEXCLUSIVITY, TO PROVIDE FOR UNIFORMITY OF APPLICATION AND CONSTRUCTION, TO PROVIDE FOR SEVERABILITY, TO SET FORTH PROVISIONS APPLICABLE TO RELATION TO THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, TO PROVIDE FOR APPLICATION TO EXISTING RELATIONSHIPS AND TO PROVIDE A SAVINGS CLAUSE; AMENDING SECTION 30-1-401, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND PROVIDING AN EFFECTIVE DATE.

S 1255 and **S 1256** were introduced, read the first time at length, and referred to the Judiciary and Rules Committee for printing.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Davis, seconded by Senator Stennett, by voice vote the Senate adjourned at 11:45 a.m. until the hour of 11 a.m., Tuesday, January 17, 2006.

JAMES E. RISCH, President

Attest: JEANNINE WOOD, Secretary